



# ICAEW REPRESENTATION 74/16 REGULATORY REPRESENTATION

## **LSB consultation on proposals to amend its requirements, outcomes and guidance for approved regulators in relation to first-tier complaints-handling**

ICAEW Professional Standards welcomes the opportunity to comment on the *Consultation on First-tier complaints handling – LSB requirements for approved regulators* published by the Legal Services Board on 2 March 2016, a copy of which is available from this [link](#).

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ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

ICAEW was granted status as an Approved Regulator and Licensing Authority for the reserved legal service of probate in August 2014, and since that time has both authorised accountancy and other firms and licensed them as alternative business structures (ABSs) for probate services.

In addition ICAEW as a regulatory body is:

- (a) the largest Recognised Supervisory Body (RSB) and Recognised Qualifying Body (RQB) for statutory audit in the UK, registering approximately 3,300 firms and 8,400 responsible individuals under the Companies Act 1989 and 2006.
- (b) the largest Prescribed Accountancy Body (PAB) and Recognised Accountancy Body (RAB) for statutory audit in Ireland, registering approximately 3,300 firms and 7,500 responsible individuals under the Companies Act 2014.
- (c) the largest single insolvency regulator licensing some 750 insolvency practitioners as a Recognised Professional Body (RPB) under the Insolvency Act 1986 out of a total UK population of 1,700.
- (d) a Designated Professional Body (DPB) under the Financial Services and Markets Act 2000 currently licensing approximately 2,300 firms to undertake exempt regulated activities under that Act.
- (e) a Supervisory Body recognised by HM Treasury for the purposes of the Money Laundering Regulations 2007 dealing with approximately 13,000 member firms.
- (f) an accredited body under the Financial Conduct Authority (FCA) Retail Distribution Review (RDR) arrangements.

In discharging these duties ICAEW are subject to oversight by the FRC's Conduct Committee, the Irish Auditing and Accounting Supervisory Authority (IAASA), the Insolvency Service, the Financial Conduct Authority and the Legal Services Board (LSB).

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For more information, please contact Vernon Soare, Executive Director Professional Standards  
[vernon.soare@icaew.com](mailto:vernon.soare@icaew.com)  
[icaew.com](http://icaew.com)

We welcome this review by the LSB of its 2010 publication setting out the requirements, outcomes and guidance for approved regulators in relation to first-tier complaints handling. Although ICAEW only became an approved regulator and licensing authority for probate in August 2014 we have a long experience in investigating complaints and, where appropriate, taking disciplinary action against members and firms for breaches of ICAEW byelaws and regulations. We believe that we can bring a unique perspective on best practice in complaints-handling given our interaction with other ombudsmen and oversight regulators from outside the legal services sector. In this context we trust that this representation will assist the LSB despite the relatively short time we have been engaged as a regulator in this space.

## **LSB's requirements**

1. We have few comments on the proposed amendments to the LSB's published requirements for approved regulators made in accordance with its powers under section 112(2) of the Legal Services Act 2007 (the Act). These establish that approved regulators must require individuals and entities they regulate to notify their clients of their right to complain, the process for doing so, and their right to refer matters to the Legal Ombudsman if they are unhappy with the outcome of the firm's investigation (what the LSB refers to as the 'first-tier complaints process'). Authorised persons must notify and signpost this information in writing both at the time of the engagement (or in the case of existing clients at the next appropriate opportunity) and at the conclusion of the complaints process.
2. The LSB proposes to maintain the substance of these requirements, but to make stylistic changes to presentation. We agree that the requirement on approved regulators to require notification and signposting arrangements should be maintained. The LSB has quoted evidence which indicates that a significant proportion of consumers of legal services still do not know how or to whom to complain if they have a problem. The amendments to the drafting of the requirements seem sensible for ease of reading.
3. We would however caution the LSB against removing the requirement in paragraph a) that authorised persons should notify and signpost these complaints-handling arrangements to existing clients at the next possible opportunity. This requirement is still relevant for entities that become newly authorised to deliver legal services and which have existing clients. While ICAEW firms are required, for example, to inform their clients generally of their right to complain (either in their letters of engagement or by other means) the sign-posting arrangements for Legal Ombudsman will only be triggered for existing clients if this aspect of the requirements is maintained.

## **LSB's outcomes**

4. We note that the LSB does not propose to change the substance of the outcomes it expects approved regulators to achieve when delivering the requirements – ie, that consumers have confidence that complaints-handling procedures provide effective safeguards for them, and that complaints will be dealt with comprehensively and swiftly, with appropriate redress where necessary. The LSB proposes only to amend the preamble to clarify how the outcomes link to its section 122(2) requirements for approved regulators. This is uncontroversial. However the LSB may wish to consider expanding the first outcome to highlight the importance of transparency and fairness in effective complaints-handling procedures.

## **LSB's guidance**

5. The majority of proposed changes relate to the LSB's published guidance on the outcomes it expects approved regulators to achieve in relation to first-tier complaints-handling. In essence this states that approved regulators should:
  - a) provide clear and concise guidance for authorised persons to accompany their regulatory arrangements (covering such matters as signposting arrangements to the

Legal Ombudsman and the need for complaints-handling procedures to be transparent, easy to use and free); and

- b) gather and analyse data from both authorised persons and the Legal Ombudsman in order to inform regulatory policy and procedures and target supervisory interventions. The LSB's guidance also states that it expects approved regulators to share findings and work collaboratively with the Legal Ombudsman to understand complaints data.
6. Similarly we do not take issue with the LSB's proposed amendments to its guidance. Recently we published guidance on our website to assist firms in complying with our signposting requirements in their letters of engagement. We have also set in place procedures to assure ourselves that our complaints-handling requirements are effective and remain fit for purpose. We have included targeted questions on the annual return about complaints and will monitor firms' compliance with our arrangements through periodic monitoring visits. These mechanisms will enable us to collate and analyse data on first-tier complaints that will inform regulatory policy. Independent evaluation of our complaints handling procedures by the Financial Reporting Council and the Insolvency Service in the context of audit and insolvency regulation provides an added check on our processes.
7. We are also in the process of agreeing an operational protocol with the Legal Ombudsman for the exchange of information between our organisations, and we are a regular participant at the Regulators Forum with other legal services regulators, the Legal Ombudsman and the Legal Services Consumer Panel. By sharing information with these other organisations we should be in a position to better identify and respond to any thematic issues that may arise. Against this backdrop we have no comments on the LSB's proposed amendments to its guidance on these points.
8. We note however that the LSB's guidance defines a 'complaint' as an "oral or written expression of dissatisfaction which alleges that the complainant has suffered (or may suffer) financial loss, distress, inconvenience or other detriment." The LSB notes that this is consistent with the Legal Ombudsman's definition and that it would expect the approved regulators' guidance to remain consistent with the Legal Ombudsman's definition if that were to change.
9. We would highlight as a general point that ICAEW defines 'complaint' as those matters which could give rise to a potential liability to disciplinary action under ICAEW's byelaws and regulations. Therefore the threshold for a potential conduct complaint being investigated by ICAEW as an approved regulator may be higher than that which would be considered by the Legal Ombudsman from a service perspective. This tension in the definitions is a theme that ICAEW has been exploring in discussions with the Legal Ombudsman, but it is a point that the LSB may wish to bear in mind also in carrying out this review under s112(2) of the Act.

## **Conclusion**

10. Effective complaints-handling procedures are vital for ensuring that consumer interests are protected and that clients have the ability to seek redress when things go wrong. Signposting requirements can also serve a dual purpose in reminding firms of the need to provide a quality client service to avoid complaints in the first place. We would hope that the current lack of complaints in relation to probate indicates that our arrangements are working well, but going forward we will have mechanisms for identifying issues that may arise in accordance with LSB guidance.